

AMENDED IN ASSEMBLY MARCH 7, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2540**

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**Introduced by Assembly Member Gatto**

February 24, 2012

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An act to amend Section 1656.1 of the Civil Code, and to add Sections ~~7201.1~~ and Section 17137 to, and to add Chapter 3.8 (commencing with Section 6301) to Part 1 of Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2540, as amended, Gatto. Sales and use taxes: services: income taxes: exclusion.

(1) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. The State Board of Equalization administers that law, the violation of which is a crime.

This bill would expand the Sales and Use Tax Law to impose a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, specified services, as defined. This bill would require all taxes, interest, and penalties imposed and all other amounts required to be paid to the state to be remitted and deposited in the same manner as required by the Sales and Use Tax Law.

By expanding the application of the Sales and Use Tax Law, the violation of which is a crime, this bill imposes a state-mandated local program.

~~(2) The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law.~~

~~This bill would additionally authorize counties and cities to impose local sales and use tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, specified services, as provided.~~

~~(3)~~

(2) Under existing law, it is presumed that parties to a contract for the sale of tangible personal property agree to the addition of sales tax reimbursement to the sales price of goods sold at retail under specified conditions. Existing law requires the State Board of Equalization to prepare and make available a sales tax reimbursement schedule, which specifies the amount of tax to be charged as to specific sales prices.

This bill would extend that provision to a contract for the sale of specified services.

~~(4)~~

(3) The Personal Income Tax Law imposes taxes based upon taxable income. That law also allows specified credits, exemptions, and exclusions, and imposes an alternative minimum tax with respect to certain items of tax preferences.

This bill would, for taxable years beginning on or after January 1, 2012, exclude from taxable income under this law an amount equal to 20% of the business income of a taxpayer, not to exceed \$10,000, as specified.

~~(5)~~

(4) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(6)~~

(5) This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1656.1 of the Civil Code is amended to read:

1656.1. (a) Whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property or specified service sold at retail to a purchaser depends solely upon the terms of the agreement of sale. It shall be presumed that the parties agreed to the addition of sales tax reimbursement to the sales price of tangible personal property or specified service sold at retail to a purchaser if:

(1) The agreement of sale expressly provides for such addition of sales tax reimbursement;

(2) Sales tax reimbursement is shown on the sales check or other proof of sale; or

(3) The retailer posts in his or her premises in a location visible to purchasers, or includes on a price tag or in an advertisement or other printed material directed to purchasers, a notice to the effect that reimbursement for sales tax will be added to the sales price of all items or certain items, whichever is applicable.

(b) It shall be presumed that the property or specified service, the gross receipts from the sale of which is subject to the sales tax, is sold at a price which includes tax reimbursement if the retailer posts in his or her premises, or includes on a price tag or in an advertisement (whichever is applicable) one of the following notices:

(1) "All prices of taxable items include sales tax reimbursement computed to the nearest mill."

(2) "The price of this item includes sales tax reimbursement computed to the nearest mill."

(c) (1) The State Board of Equalization shall prepare and make available for inspection and duplication or reproduction a sales tax reimbursement schedule which shall be identical with the following tables up to the amounts specified therein:

4 <sup>3</sup> / <sub>4</sub> percent		
Price		Tax
.01– .10 .....		.00
.11– .31 .....		.01
.32– .52 .....		.02

1	.53– .73 .....	.03
2	.74– .94 .....	.04
3	.95–1.15 .....	.05
4		
5	5 percent	
6	Price	Tax
7	.01– .09 .....	.00
8	.10– .29 .....	.01
9	.30– .49 .....	.02
10	.50– .69 .....	.03
11	.70– .89 .....	.04
12	.90–1.09 .....	.05
13		
14	5 ¼ percent	
15	Price	Tax
16	.01– .09 .....	.00
17	.10– .28 .....	.01
18	.29– .47 .....	.02
19	.48– .66 .....	.03
20	.67– .85 .....	.04
21	.86–1.04 .....	.05
22		
23	5 ½ percent	
24	Price	Tax
25	.01– .09 .....	.00
26	.10– .27 .....	.01
27	.28– .45 .....	.02
28	.46– .63 .....	.03
29	.64– .81 .....	.04
30	.82– .99 .....	.05
31	1.00–1.18 .....	.06
32		
33	5 ¾ percent	
34	Price	Tax
35	.01– .08 .....	.00
36	.09– .26 .....	.01
37	.27– .43 .....	.02
38	.44– .60 .....	.03
39	.61– .78 .....	.04
40	.79– .95 .....	.05

1	.96–1.13 .....	.06
2		
3	6 percent	
4	Price	Tax
5	.01– .08 .....	.00
6	.09– .24 .....	.01
7	.25– .41 .....	.02
8	.42– .58 .....	.03
9	.59– .74 .....	.04
10	.75– .91 .....	.05
11	.92–1.08 .....	.06
12		
13	6 $\frac{1}{4}$ percent	
14	Price	Tax
15	.01– .07 .....	.00
16	.08– .23 .....	.01
17	.24– .39 .....	.02
18	.40– .55 .....	.03
19	.56– .71 .....	.04
20	.72– .87 .....	.05
21	.88–1.03 .....	.06
22		
23	6 $\frac{1}{2}$ percent	
24	Price	Tax
25	.01– .07 .....	.00
26	.08– .23 .....	.01
27	.24– .38 .....	.02
28	.39– .53 .....	.03
29	.54– .69 .....	.04
30	.70– .84 .....	.05
31	.85– .99 .....	.06
32	1.00–1.15 .....	.07
33		
34	6 $\frac{3}{4}$ percent	
35	Price	Tax
36	.01– .07 .....	.00
37	.08– .22 .....	.01
38	.23– .37 .....	.02
39	.38– .51 .....	.03
40	.52– .66 .....	.04

1	.67– .81 .....	.05
2	.82– .96 .....	.06
3	.97–1.11 .....	.07

4

5

7 percent

6	Price	Tax
7	.01– .07 .....	.00
8	.08– .21 .....	.01
9	.22– .35 .....	.02
10	.36– .49 .....	.03
11	.50– .64 .....	.04
12	.65– .78 .....	.05
13	.79– .92 .....	.06
14	.93–1.07 .....	.07

15

16

7  $\frac{1}{4}$  percent

17	Price	Tax
18	.01– .06 .....	.00
19	.07– .20 .....	.01
20	.21– .34 .....	.02
21	.35– .48 .....	.03
22	.49– .62 .....	.04
23	.63– .75 .....	.05
24	.76– .89 .....	.06
25	.90–1.03 .....	.07

26

27

7  $\frac{1}{2}$  percent

28	Price	Tax
29	.01– .06 .....	.00
30	.07– .19 .....	.01
31	.20– .33 .....	.02
32	.34– .46 .....	.03
33	.47– .59 .....	.04
34	.60– .73 .....	.05
35	.74– .86 .....	.06
36	.87– .99 .....	.07
37	1.00–1.13 .....	.08

38

39 (2) Reimbursement on sales prices in excess of those shown in  
 40 the schedules may be computed by applying the applicable tax

1 rate to the sales price, rounded off to the nearest cent by eliminating  
2 any fraction less than one-half cent and increasing any fraction of  
3 one-half cent or over to the next higher cent.

4 (3) If sales tax reimbursement is added to the sales price of  
5 tangible personal property or specified service sold at retail, the  
6 retailer shall use a schedule provided by the board, or a schedule  
7 approved by the board.

8 (d) The presumptions created by this section are rebuttable  
9 presumptions.

10 (e) "Specified service" means a specified service as defined in  
11 subdivision (b) of Section 6301 of the Revenue and Taxation Code.

12 SEC. 2. Chapter 3.8 (commencing with Section 6301) is added  
13 to Part 1 of Division 2 of the Revenue and Taxation Code, to read:

14  
15 CHAPTER 3.8. SERVICES

16  
17 Article 1. General Provisions and Definitions

18  
19 6301. (a) Except where the context otherwise requires, the  
20 definitions given in Chapter 1 (commencing with Section 6001)  
21 govern this chapter. For purposes of this chapter, the references  
22 to tangible personal property in Chapter 1 (commencing with  
23 Section 6001) shall include a specified service.

24 (b) For purposes of this chapter, "specified service" means:

25 ~~(1) Astrology, tarot, and palm reading.~~

26 ~~(2) Carpet cleaning.~~

27 ~~(3) Access to the facilities of a country club, including access  
28 through the imposition of a charge.~~

29 ~~(4) Massage.~~

30 ~~(5) The provision of personal, private lessons on any topic.~~

31 ~~(6) Personal shopping.~~

32 ~~(7) Shoe repair.~~

33 ~~(8) Shoe shining.~~

34 ~~(9) Pool maintenance.~~

35 ~~(10) Party planning.~~

36 ~~(11) Access to the facilities of a billiard parlor through the  
37 imposition of a charge.~~

38 ~~(12) Access to the facilities of a ski resort through the imposition  
39 of a charge.~~

- 1     ~~(13) Access to theater productions through the purchase of a~~
- 2     ~~ticket or membership fees or dues.~~
- 3     ~~(14) Limousine rental.~~
- 4     ~~(15) Marina services.~~
- 5     ~~(16) Access to storage facilities, not including storage facilities~~
- 6     ~~used for the storage of food, through the imposition of a charge.~~
- 7     ~~(17) Furniture repair.~~
- 8     ~~(18) Watch repair.~~
- 9     ~~(19) Cosmetic surgery.~~
- 10    ~~(20) Support activities for metal mining.~~
- 11    ~~(21) Boat repair.~~
- 12    ~~(22) Charter bus services for travel within the state.~~
- 13    ~~(23) High net worth estate planning.~~
- 14    ~~(24) Spa services provided to pets.~~
- 15    ~~(25) Access to private, telephonic chat lines through the~~
- 16    ~~imposition of a charge to callers.~~
- 17    ~~(26) Private aircraft pilot services for travel within the state.~~
- 18    ~~(27) Pet grooming where the buyer is charged fifty dollars (\$50)~~
- 19    ~~or more for the grooming.~~
- 20    ~~(1) Yacht and boat repair.~~
- 21    ~~(2) Private aircraft pilot or private jet services.~~
- 22    ~~(3) Astrology, tarot, and palm reading.~~
- 23    ~~(4) Personal shopping.~~
- 24    ~~(5) Party planning.~~
- 25    ~~(6) Pool maintenance.~~
- 26    ~~(7) Spa services provided to pets.~~
- 27    ~~(8) Elective cosmetic surgery.~~
- 28    ~~(9) Access to the facilities of a country club, including access~~
- 29    ~~through the imposition of a charge.~~
- 30    ~~(10) Marina services.~~
- 31    ~~(11) Limousine rental.~~
- 32    ~~(12) Shoe shining.~~
- 33    ~~(13) Nonmedical massage.~~
- 34    ~~(14) Pet grooming where the buyer is charged fifty dollars (\$50)~~
- 35    ~~or more for the grooming.~~
- 36    ~~(15) The provision of personal, private lessons on any topic,~~
- 37    ~~excluding tutoring services for K-12 or college academic courses.~~
- 38    ~~(16) Shoe repair.~~
- 39    ~~(17) Access to the facilities of a ski resort through the imposition~~
- 40    ~~of a charge.~~

1     (18) *Carpet cleaning.*

2     (19) *Access to storage facilities, not including storage facilities*  
3 *used for the storage of food, through the imposition of a charge*  
4 *of one thousand dollars (\$1,000) a month or more.*

5     (20) *Furniture repair.*

6     (21) *Watch repair.*

7     (22) *Support activities for metal mining.*

8     (23) *Charter bus services.*

9     (24) *Access to live theater productions through the purchase of*  
10 *a ticket or membership fees or dues.*

11     (25) *Access to the facilities of a billiard parlor through the*  
12 *imposition of a charge.*

13     (26) *Access to private, telephonic chat lines through the*  
14 *imposition of a charge to callers.*

15     (27) *High net worth estate planning.*

16     6302. (a) For purposes of this part, the place of the sale or  
17 purchase of a specified service is the place where the act  
18 constituting the sale or purchase of the specified service occurs.

19     (b) If the seller delivers the specified service at the seller's place  
20 of business, the place where the act constituting the sale or purchase  
21 of the service occurs shall be deemed to be at the seller's place of  
22 business.

23     (c) If paragraph (b) does not apply, the place where the act  
24 constituting the sale or purchase occurs shall be deemed to be the  
25 address of the purchaser as indicated by the seller's business  
26 records, if the records are maintained in the ordinary course of the  
27 seller's business and if the seller uses that address in good faith.

28     (d) If paragraphs (b) and (c) do not apply, the place where the  
29 act constituting the sale or purchase occurs shall be deemed to be  
30 the address indicated on the purchaser's payment instrument, if  
31 the seller uses that address in good faith.

32  
33             Article 2. Imposition and Collection of Tax  
34

35     6305. In addition to the taxes imposed by this part, for the  
36 privilege of selling specified services at retail a tax is hereby  
37 imposed upon all retailers at a rate of 7.5 percent of the gross  
38 receipts of any retailer from the sale of all specified services sold  
39 at retail in this state on or after January 1, 2013.

6306. In addition to the taxes imposed by this part, an excise tax is hereby imposed on the storage, use, or other consumption in this state of specified services purchased from any retailer on or after January 1, 2013, for storage, use, or other consumption in this state at a rate of 7.5 percent of the sales price of the specified services.

6307. (a) Section 6055, regarding worthless and charged off accounts, shall apply to this chapter. Except where the context otherwise requires, for purposes of this chapter, the references in that section to tangible personal property shall include a specified service.

(b) Section 6203.5, regarding worthless and charged off accounts, shall apply to this chapter. Except where the context otherwise requires, for purposes of this chapter, the references in that section to tangible personal property shall include a specified service.

6308. (a) Section 6204, regarding retailer debt, shall apply to this chapter. Except where the context otherwise requires, for purposes of this chapter, the references in that section to tangible personal property shall include a specified service.

(b) Section 6205, regarding advertising that tax will be assumed, shall apply to this chapter. Except where the context otherwise requires, for purposes of this chapter, the references in that section to tangible personal property shall include a specified service.

(c) Section 6206, regarding separate statement of price and tax, shall apply to this chapter. Except where the context otherwise requires, for purposes of this chapter, the references in that section to tangible personal property shall include a specified service.

### Article 3. Permits and Registration, Prescriptions, and Resale Certificates

6310. (a) Except where the context otherwise requires, Article 2 (commencing with Section 6066) of Chapter 2, regarding permits, shall apply to this chapter. For purposes of this chapter, the references to tangible personal property in Article 2 (commencing with Section 6066) of Chapter 2 shall include a specified service.

(b) Except where the context otherwise requires, Article 2 (commencing with Section 6225) of Chapter 3, regarding registration, shall apply to this chapter. For purposes of this chapter,

1 the references to tangible personal property in Article 2  
2 (commencing with Section 6225) of Chapter 3 shall include a  
3 specified service.

4 6311. (a) Except where the context otherwise requires, Article  
5 3 (commencing with Section 6091) of Chapter 2, regarding  
6 presumptions and resale certificates, shall apply to this chapter.  
7 For purposes of this chapter, the references to tangible personal  
8 property in Article 3 (commencing with Section 6091) of Chapter  
9 2 shall include a specified service.

10 (b) Except where the context otherwise requires, Article 3  
11 (commencing with Section 6241) of Chapter 3, regarding  
12 presumptions and resale certificates, shall apply to this chapter.  
13 For purposes of this chapter, the references to tangible personal  
14 property in Article 3 (commencing with Section 6241) of Chapter  
15 3 shall include a specified service.

16  
17 Article 4. Exemptions  
18

19 6315. Except where the context otherwise requires, Chapter 4  
20 (commencing with Section 6351), regarding exemptions, shall  
21 apply to this chapter. For purposes of this chapter, any references  
22 to tangible personal property in Chapter 4 (commencing with  
23 Section 6351) shall include a specified service.  
24

25 Article 5. Determinations  
26

27 6320. Except where the context otherwise requires, Chapter 5  
28 (commencing with Section 6451), regarding determinations, shall  
29 apply to this chapter. For purposes of this chapter, any references  
30 to tangible personal property in Chapter 5 (commencing with  
31 Section 6451) shall include a specified service.  
32

33 Article 6. Collection of Tax  
34

35 6325. Except where the context otherwise requires, Chapter 6  
36 (commencing with Section 6701), regarding collection of tax, shall  
37 apply to this chapter. For purposes of this chapter, any references  
38 to tangible personal property in Chapter 6 (commencing with  
39 Section 6701) shall include a specified service.

## Article 7. Overpayments and Refunds

6330. Except where the context otherwise requires, Chapter 7 (commencing with Section 6901), regarding determinations, shall apply to this chapter. For purposes of this chapter, any references to tangible personal property in Chapter 7 (commencing with Section 6901) shall include a specified service.

## Article 8. Administration

6335. Except where the context otherwise requires, Chapter 8 (commencing with Section 7051), regarding administration, shall apply to this chapter. For purposes of this chapter, any references to tangible personal property in Chapter 8 (commencing with Section 7051) shall include a specified service.

## Article 9. Disposition of Proceeds

6340. All fees, taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state under this chapter shall be remitted and deposited in the same manner as required by Section 7101.

## Article 10. Violations

6345. Chapter 10 (commencing with Section 7152), regarding violations, shall apply to this chapter. For purposes of this chapter, any references to tangible personal property in Chapter 10 (commencing with Section 7152) shall include a specified service.

## Article 11. Res Judicata

6348. Chapter 11 (commencing with Section 7176), regarding res judicata, shall apply to this chapter. For purposes of this chapter, any references to tangible personal property in Chapter 11 (commencing with Section 7176) shall include a specified service.

~~SEC. 3. Section 7201.1 is added to the Revenue and Taxation Code, to read:~~

~~7201.1. (a) Any county and any city may adopt a sales and use tax ordinance on the sale of, or the storage, use, or other~~

1 consumption of, specified services, in compliance with the  
2 provisions of this part, with such changes as required for references  
3 to tangible personal property to include specified services.

4 (b) “Specified services” means a specified service as defined  
5 in subdivision (b) of Section 6301.

6 ~~SEC. 4.~~

7 *SEC. 3.* Section 17137 is added to the Revenue and Taxation  
8 Code, to read:

9 17137. (a) For taxable years beginning on or after January 1,  
10 2012, gross income shall not include an amount equal to 20 percent  
11 of the business income of a taxpayer.

12 (b) For purposes of this section:

13 (1) “Business income of a taxpayer” means income from a trade  
14 or business, whether conducted by the taxpayer or by a pass-thru  
15 entity in which the taxpayer is a partner or shareholder.

16 (2) “Pass-thru entity” means a partnership or an “S” corporation.

17 (c) In the case of a pass-thru entity, the amount of business  
18 income under this section attributable to a partner or shareholder  
19 shall be treated as a “separately stated item” within the meaning  
20 of Sections 702 and 1366 of the Internal Revenue Code,  
21 respectively.

22 (d) The maximum amount that may be excluded from the gross  
23 income of any taxpayer pursuant to this section for any taxable  
24 year is ten thousand dollars (\$10,000).

25 (e) In the case of a husband and wife who file separate returns  
26 (including spouses and registered domestic partners), the exclusion  
27 under this section may be taken by either or equally divided  
28 between them, and the limitation under subdivision (d) shall be an  
29 aggregate ten thousand dollars (\$10,000) for both returns.

30 ~~SEC. 5.~~

31 *SEC. 4.* No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section 17556 of  
37 the Government Code, or changes the definition of a crime within  
38 the meaning of Section 6 of Article XIII B of the California  
39 Constitution.

1     ~~SEC. 6.~~

2     *SEC. 5.* This act provides for a tax levy within the meaning of

3     Article IV of the Constitution and shall go into immediate effect.

O